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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,849	02/28/2002	Mustafa Akram	H 4420 PCT/US	5227

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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/069,849

Applicant(s)

AKRAM ET AL.

Examiner

Eisa B Elhilo

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 & 6. 6) ☐ Other:

Art Unit: 1751

Claims 18-40 are pending in this application.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18, 20-22, 28, 30-36 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Grollier et al. (US 4,425,132).

Grollier (US' 132) teaches a two-stage process for dyeing keratin fibers. The process comprises treating the fibers with a first composition having a pH of less than 8 and containing a from 0.05 to 6% of direct dyestuff of 4-amino-3-nitrophenol as claimed in claims 18, 20-22, 30-31 and 38 (see col. 8, line 5, col. 10, line 5 and col. 26, claim 12) and post-treated with an oxidation colorant composition comprising oxidative dye precursor of para-phenylenediamine and coupler of 2-methyl resorcinol as claimed in claim 18 and 32-35 (see col. 3, lines 60-61, col. 6, line 5 and col. 27, claim 19). The application time of the first composition is about 10 to 30 minutes, which is within the claimed range of time as claimed in claim 28 (see col. 10, lines 9-10). Grollier also teaches a method in which the oxidative dye precursor is oxidized with an oxidizing agent such as hydrogen peroxide as claimed in claim 36 (see col. 12 the table and col. 15, Example 4). Grollier teaches all the limitations of the instant claims. Hence, Grollier anticipates the claims.

Art Unit: 1751

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19, 23, 29, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grollier et al. (US 4,425,132).

Grollier (US' 132) teaches a two-stage process for dyeing keratin fibers. The process comprises treating the fibers with a first composition containing from 0.05 to 6% of direct dyestuff which is overlapped with the claimed range as claimed in claim 23 (see col. 10, line 5 and col. 26, claim 12) and post-treated with an oxidation colorant composition comprising oxidative dye precursor (see col. 27, claim 19). The application time of the first composition is about 2 to 40 minutes, which is overlapped with the claimed range of time as claimed 29 (see col. 10, lines 9-10).

The instant claims differ from the reference by reciting a process for coloring hair wherein the pretreatment composition is applied to the hair by spraying and applied to the end portion of the hair as claimed.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply such a process for dyeing hair by spraying the composition to any portion of the hair with the reasonable expectation of success because the reference teaches a process for dyeing hair by treating the hair with a composition that can be packaged in an aerosol (see col. 10, lines 16-20), and, thus, a person of the ordinary skill in the art would expect such a

Art Unit: 1751

composition could be applied by spraying method and would expect such a method to have similar results to those claimed, absent unexpected results.

3 Claims 24-27 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grollier et al. (US 4,425,132) in view of Nicolas-Morgantini et al. (US 5,954,871).

The disclosure of Grollier (US' 132), is summarized above. The reference does not teach or disclose a method wherein the pretreating composition comprising a fiber-structure-improving agent as claimed.

However, the reference teaches a method comprising applying to the hair a composition that comprises improving agents such as thickeners, treating agents, sequestering agent and sun filters (see col. 11, lines 59-63).

Nicolas (US' 871) teaches in analogous art of hair dyeing formulations, a method for dyeing hair (see abstract). The method comprises applying to the hair a composition comprising a fiber-structure-Improving agent of panthenol as claimed in claims 24-27 (see col. 14 Example 1) and enzymes as oxidizing agents as claimed in claim 37 (see col. 6, lines 11-15).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of the primary reference by replacing the hydrogen peroxide with the enzymes as taught by Nicolas and also to incorporate panthenol in the composition with a reasonable expectation of success for improving the hair properties. Further, Nicolas teaches the equivalence between hydrogen peroxide and enzymes in the dyeing composition as oxidizing agents (see col. 6, lines 11-19) and, thus, a person of the ordinary skill in the art would expect such a composition to have

Art Unit: 1751

similar properties and could be applied by a method similar to those claimed, absent unexpected results.

Conclusion

The remaining references listed on form 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-0661. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Eisa Elhilo
Patent Examiner
Art Unit 1751

October 15, 2003.